

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LANA VENTO CHARITABLE TRUST,  
6501 Red Hook Plaza, Suite 201  
PMB 534  
St. Thomas, VI 00802-1306  
Plaintiff,

v.

INTERNAL REVENUE SERVICE,  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224  
Defendant.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 et. seq., (“FOIA”), as amended, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff, Lana Vento Charitable Trust, by Defendant, the Internal Revenue Service (“IRS”).

Jurisdiction and Venue

2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, because this is an action to enforce the FOIA.

3. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### Parties

4. Plaintiff, the Lana Vento Charitable Trust, the requester of the agency records that have been improperly withheld, is a charitable trust organized and existing under the laws of the state of Utah and having its principal place of business in the U.S. Virgin Islands. Plaintiff is an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("IRC"), as applicable in the United States and in the U.S. Virgin Islands, 26 U.S.C. § 501(c)(3).

5. Defendant, the IRS, is a component entity of the Department of the Treasury, which is a Department of the Executive Branch of the United States Government. The IRS has its headquarters in Washington, D.C., within this judicial district. The IRS is an "agency" within the meaning of 5 U.S.C. § 552(f). The IRS has possession and control of the records requested by Plaintiff.

### Plaintiff's FOIA Request

6. On September 12, 2008, Plaintiff filed a request with the IRS for information pursuant to FOIA ("Plaintiff's FOIA Request"). Plaintiff's FOIA Request made clear that Plaintiff would not consent to any extensions of time to comply with the request. A true and correct copy of Plaintiff's FOIA Request (without attachments) is attached to this Complaint as Exhibit A.

7. An agency must respond to a request for documents pursuant to FOIA within twenty (20) working days. By letter dated October 14, 2008, the IRS responded to Plaintiff's

FOIA Request, claiming an extension of time in which to respond to October 28, 2008, pursuant to 5 U.S.C. § 552(a)(6)(B). The IRS's letter further states:

We realize we will be unable to locate and consider releasing the Internal Revenue Service records covered by your request by the expiration of the statutory period. Therefore, we extend the response date to December 12, 2008, by which time we reasonably believe that we can provide a final response to your request.

If you agree to this extension, no reply to this letter is necessary. . . . If you do not agree to an extension beyond the statutory period, and do not want to modify the scope of your request, you may file suit. See U.S.C. 552(a)(6)(C)(i) [sic], and 26 CFR 601.702(c)(12). You may file suit in the U.S. District Court where you reside or have your principal place of business, where the records are located, or in the District of Columbia.

A copy of the IRS's letter of October 14, 2008, is attached hereto as Exhibit B.

8. The statutory period for responding to the Plaintiffs's FOIA Request has lapsed and, to date, the IRS has not provided the records requested by Plaintiff in Plaintiff's FOIA Request. The IRS has wrongfully withheld the requested records from Plaintiff.

9. Pursuant to 5 U.S.C. § 552(a)(6)(C), Plaintiff is deemed to have exhausted the applicable administrative remedies with respect to Plaintiff's FOIA Request.

10. The Plaintiff qualifies as a "party" for purposes of 28 U.S.C. §2412(d)(2)(B) because it is an organization described in IRC section 501(c)(3). Thus, Plaintiff is entitled to attorneys' fees and costs under 28 U.S.C. § 2412, as well as under 5 U.S.C. § 552(a)(4)(E).

### **Prayer for Relief**

WHEREFORE, Plaintiff prays that this Court:

(A) Order Defendant to disclose the requested records in their entirety and make copies available to Plaintiff;

- (B) Provide for expeditious proceedings in this action;
- (C) Award Plaintiff its costs and reasonable attorneys' fees incurred in this action;

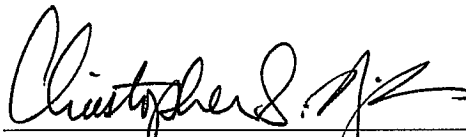
and

- (D) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

LANA VENTO CHARITABLE TRUST

By its Counsel,



CHRISTOPHER S. RIZEK (D.C. Bar No. 370796)  
Caplin & Drysdale, Chartered  
One Thomas Circle, N.W., Ste. 1100  
Washington, D.C. 20005  
(202) 862-8852  
[csr@capdale.com](mailto:csr@capdale.com)

**Caplin & Drysdale**  
ATTORNEYS

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www.caplindrysdale.com

202-862-5020 Direct  
mso@capdale.com

September 12, 2008

**VIA FEDERAL EXPRESS**

Internal Revenue Service  
Disclosure Office 4  
MS 7000 CHI Room 2820  
230 S. Dearborn Street  
Chicago, IL 60604

**Re: Lana Vento Charitable Trust (EIN 87-0679459)**  
**(f/k/a The Dick and Lana Charitable Supporting Organization)**

Dear Sir or Madam:

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), the Privacy Act, 5 U.S.C. § 552a, and sections 6103(e)(1) and (e)(7) of the Internal Revenue Code of 1986 (the "Code").

Pursuant to these statutes, the taxpayer identified above, Lana Vento Charitable Trust ("LVCT"), formerly known as The Dick and Lana Charitable Supporting Organization, hereby requests any and all documents related to the examination of LVCT commenced by the Internal Revenue Service on or about November 17, 2005. The examining agent is Ms. Donna Pittman, and her mailing address is 9450 Koger Blvd., Room 208, St. Petersburg, FL 33702. Please note that the term "document" in this request is intended to include the full panoply of documents that meet that definition under the FOIA, as well as any item of "return information" as that term is defined in Code section 6103(b), including, without limitation, any and all documents received from, or notes or transcripts of conversations with, Michael C. Walch, Gary Hatch, Travis Bowen or any other persons during the course of the examination.

Further, we request the following:

1. Any and all documents related to any request from any person, including any official or employee of the federal government, including any Members of Congress, who requested that LVCT be examined.



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2. Any and all documents that relate to the initiation of the examination of LVCT, and in particular any and all documents that in the IRS's view evidence a violation of Code section 501(c)(3) by LVCT.

3. Any and all documents relating to the IRS's determination on or about December 16, 2004 that, effective July 10, 2001, LVCT is a tax-exempt charitable organization described in Code sections 501(c)(3) and 509(a)(3).

Attached are copies of the completed Power of Attorney (Form 2848) and Tax Information Authorization (Form 8821) that are on file with the IRS authorizing us to receive this information on behalf of the above-named taxpayer.

Please mail copies of the requested documents to me at the address shown above. The IRS is authorized to charge Caplin & Drysdale for the costs, up to \$1,000.00, of searching for the documents described above, making any necessary deletions or redactions from them, and making the requested copies. If such costs are estimated to exceed \$1,000.00, please contact me at (202) 862-5020 with the estimate and for further authorization.

Should it be asserted that any portion of the requested documents is exempt from disclosure under the FOIA, Privacy Act, or Code section 6103, please provide us with a copy of the portion(s) considered not exempt. Further, with respect to each document (or any portion thereof) that you believe is exempt from disclosure, please provide us with the following information:

1. The title of the document;
2. The date (if any) of the document;
3. The author(s) of the document;
4. The recipient(s) of the document, including both the addressee and any individuals to whom copies were directed;
5. A factual description of the document;
6. A statement of the specific exemption(s) claimed under the statutory provisions; and
7. The justification for claiming the exemption(s).

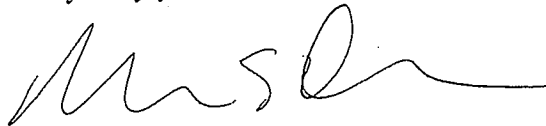
Caplin & Drysdale  
CHARITABLE

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Any correspondence concerning this request should be sent to me at the address shown above. Please note in advance, however, that the taxpayer does not intend to agree to any extensions of the statutory deadlines for responding to this request that are set forth in the FOIA and accompanying regulations.

Thank you very much for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MSO', with a long horizontal flourish extending to the right.

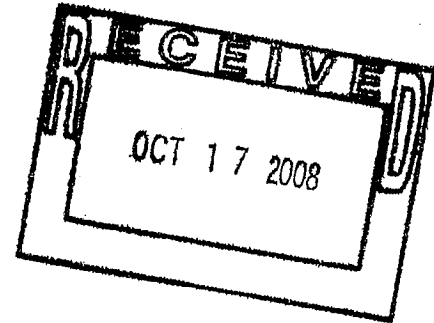
Marcus S. Owens

cc: Lana Vento Charitable Trust



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION



October 14, 2008

Caplin & Drysdale Attorneys  
Marcus Owens  
One Thomas Circle, NW, Suite 1100  
Washington, DC 20005

Re: Lana Vento Charitable Trust

Dear Mr. Owens:

This is in reference to your Freedom of Information Act (FOIA) request dated September 12, 2008, and received in our office on September 15, 2008. We are unable to respond to your request by October 14, 2008, which is the 20 business-day period prescribed by law. We apologize for any inconvenience this delay may cause. You may expect a response by December 12, 2008. Since an administrative appeal is limited to a denial of records, it does not apply in this situation. However, you may instead file suit after the statutory time period for response has lapsed.

The FOIA process is not an additional avenue of recourse during administrative tax proceedings; it merely provides access to existing records. Extending the time period for our response to your request has no bearing on any ongoing tax matter such as the collection due process or an examination appeal.

#### **STATUTORY EXTENSION OF TIME FOR RESPONSE**

In certain situations the FOIA allows us to invoke an additional ten-day statutory extension. To respond to your request, we require additional time to search for, collect, and review responsive records from other locations. Therefore, we have extended the statutory response date (after which you can file suit) to October 28, 2008, as provided for in the FOIA (5 U.S.C. 552(a)(6)(B)).

#### **ADDITIONAL EXTENSION OF TIME LIMIT**

We realize we will be unable to locate and consider releasing the Internal Revenue Service records covered by your request by the expiration of the statutory period. Therefore, we extended the response date to

**EXHIBIT  
B**



December 12, 2008, by which time we reasonably believe we can provide a final response to your request.

If you agree to this extension, no reply to this letter is necessary. If we subsequently deny your request, you still have the right to file an administrative appeal. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If you do not agree to an extension beyond the statutory period, and do not want to modify the scope of your request, you may file suit. See U.S.C. 552 (a)(6)(C)(i), and 26 CFR 601.702 (c)(12). You may file suit in the U. S. District Court where you reside or have your principal place of business, where the records are located, or in the District of Columbia.

You may file suit no earlier than, October 28, 2008. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service process, which should be directed to:

Commissioner of Internal Revenue  
Attention: CC:PA:DPL  
1111 Constitution Avenue, NW  
Washington, DC 20224

#### CONTACT INFORMATION

If you have any questions concerning this correspondence, you may contact Disclosure Specialist, Mrs. Brewer, ID#0274244, by phone at 410-962-9209 or by mail at Internal Revenue Service, Disclosure Office, 31 Hopkins Plaza, Room 940, Baltimore, MD 21201. Please refer to case number 04-2008-01972.

Sincerely,



K. Brewer  
Disclosure Specialist  
Baltimore Office